

COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. 1.136(a) (Small Entity)

Docket No.
28749-00003

In Re Application of:

Ronald J. DEHAAS

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/605,886	November 4, 2003	Dustin Nguyen	35161	2454	2885

Invention:

INTERNET USE MONITORING SYSTEM AND METHOD

COMMISSIONER FOR PATENTS:

This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief.

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☐ One month ☐ Two months ☐ Three months ☐ Four months ☒ Five months

from: July 8, 2008
Date

until: November 8, 2008
Date

The fee for the Appeal Brief and Extension of Time has been calculated as shown below:

Fee for Appeal Brief: \$270.00

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TOTAL FEE FOR APPEAL BRIEF AND EXTENSION OF TIME: \$1,445.00

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- ☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 04-1061
- ☐ Any additional filing fees required under 37 C.F.R. 1.16.
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COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
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In Re Application of:

Ronald J. DEHAAS

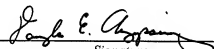
Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/605,886	November 4, 2003	Dustin Nguyen	35161	2454	2885

Invention:

INTERNET USE MONITORING SYSTEM AND METHOD

TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:


Signature
John M. Naber
Registration No. 46,487

Dated: November 7, 2008

John M. Naber
Registration No. 46,487

DICKINSON WRIGHT PLLC
1875 Eye Street, NW, Suite 1200
Washington, DC 20006
Telephone: (202) 659-6950
Facsimile: (202) 659-1559

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application No.	:	10/605,886	Confirmation: 2885
Applicants	:	Ronald J. DEHAAS	
Filed	:	November 4, 2003	
TC/A.U.	:	2454	
Examiner	:	Dustin Nguyen	
Docket No.	:	28749-00003	
Customer No.	:	35161	
Title	:	INTERNET USE MONITORING SYSTEM AND METHOD	

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P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

This brief is being submitted in support of the Notice of Appeal of the Final Rejection filed April 8, 2008 and together with a five-month Petition for Extension of Time extended from July 8, 2008 to November 8, 2008.

(1) REAL PARTIES IN INTEREST

The real parties in interest are the co-inventors Mr. Ronald J. DeHaas, Mr. Scott D. Hammersley, and Mr. Collin J. Rose.

(2) RELATED APPEALS AND INTERFERENCES

The Appellants are unaware of any related appeals or interferences.

(3) STATUS OF CLAIMS

Claims 1-40 are currently pending and stand rejected under a combination of 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) rejections in the Final Office Action mailed February 6, 2008. The rejection of claims 1-40 is appealed.

(4) STATUS OF AMENDMENTS

No amendment to the claims has been filed subsequent to the rejection of claims 1-40 in the Final Office Action mailed February 6, 2008.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Aspects of the present invention generally relate to a computer program for monitoring select Internet activities of a user of a selected computer to which the program is installed, and more particularly to a voluntary monitoring program configured to monitor multiple Internet access activities, such as web browsing, file sharing programs, news groups, chat rooms, peer to peer chats, file transfer protocols, e-mails sent and received, and the like. At the time of the present invention, the voluntary programs available in the prior art were configured to monitor web sites accessed by the computer user. However, such programs did not offer the capability to monitor the activities resulting from use of other protocols, such as access to file share programs, news groups, chat rooms, peer to peer chats, file transfer protocols, and e-mails. Without these capabilities a user could circumvent a monitoring program by accessing unmonitored Internet protocols.

Independent claim 1 of the present invention is directed towards a system (20 in FIG. 1; page 7, par. [0024], lines 11-13) for monitoring use of a selected user, comprising: a remote server (26 in FIG. 1; specification, page 8, par. [0026], lines 1-10); a computer (22 in FIG. 1; page 7, par. [0024], lines 11-13) communicatively connected to said remote server with the computer having a monitoring program voluntarily installed thereon by the computer user, said monitoring program configured to monitor Internet access activity of the computer user and record said Internet access activity within said remote server (specification, page 7, par. [0024], lines 11-17); and wherein said Internet access activity includes access to at least one Internet protocol from a group consisting of network news transfer protocols, file sharing programs, file transfer protocols, chat room access, peer to peer chats, and electronic mail activity (specification, page 8, par. [0027], lines 11-20). Please note that paragraph references throughout this brief refer to the paragraph numbers in the application as filed.

Independent claim 18 of the present invention is directed towards a method (FIG. 2; specification, page [6, par. [0018], lines 1-2) of monitoring Internet use of a selected computer user, the method comprising the steps of: a user voluntarily installing a monitoring program on the selected computer (specification, page 7, par. [0024], lines 13-14), said program configured to monitor Internet access activity of said user (specification, page 7, par. [0024], lines 11-12),

said Internet access activity including at least one Internet protocol from the group consisting of newsgroup access, file sharing programs, file transfer protocols, chat room activity, peer to peer chats, and electronic mail activity (specification, page 8, par. [0027], lines 11-20); monitoring said Internet access activity (FIG. 2; specification, page 7, par. [0024], lines 11-12); and recording said Internet access activity on a first database located within a remote server (FIG. 2; specification, page 10, par. [0030], lines 7-8).

Independent claim 29 of the present invention is directed towards a system (20 in FIG. 1; specification, page 7, par. [0024], lines 11-13) for reporting the contents of Internet access from a selected computer: a remote server (26 in FIG. 1; specification, page 8, par. [0026], lines 1-10); a computer (22 in FIG. 1; specification, page 7, par. [0024], lines 11-13) communicatively connected to said remote server having a monitoring program installed thereon, said monitoring program configured to monitor Internet access activity of the computer user, record said activity on said remote server (specification, page 7, par. [0024], lines 11-17), wherein said Internet access activity includes access to at least one Internet protocol from the group consisting of hyper text transfer protocol, network news transfer protocol, file sharing programs, file transfer protocol, chat rooms, peer to peer chats, and electronic mail (specification, page 8, par. [0027], lines 11-20); and wherein said remote server is configured to generate a report, and said report includes a plurality of portions wherein each of said plurality of portions contains a list of said recorded Internet access activity of one of said Internet protocols, and wherein said portions further include a computer link to connect to another portion of said report (specification, page 10, par. [0031], line 23 – page 11 line 3).

Independent claim 34 of the present invention is directed towards a method (FIG. 2; specification, page 6, par. [0018], lines 1-2) of reporting Internet use of a computer user, the method comprising the steps of: a user voluntarily installing an Internet monitoring program on the computer (specification, page 7, par. [0024], lines 13-14), said program configured to monitor Internet access activity of said user (specification, page 7, par. [0024], lines 11-12); monitoring said Internet access activity (FIG. 2; specification, page 7, par. [0024], lines 11-12); generating a report of said Internet access activity, said report including a plurality of portions (FIG. 2; specification, page 10, par. [0030], lines 7-8); and providing a link on one portion of said report to electronically connect to at least one other portion of said report, wherein each of said plurality of portions contain information on Internet access of different Internet protocols (specification, page 10, par. [0031], line 23 – page 11 line 8).

(6) GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

(1) Whether claims 1-4, 7, 9-13, 16, 18-20, 23, 24, 26 and 27 are anticipated by Fulgoni et al. (U.S. Patent No. 7,181,412)(hereinafter, "Fulgoni").

(2) Whether claims 5, 6, 8, 14, 15, 17, 21, 22, 25 and 28-40 are unpatentable under 35 U.S.C. §103(a) over Fulgoni in view of Linden et al. (U.S. Patent No. 6,912,505)(hereinafter, "Linden").

(7) ARGUMENT

The Examiner has not established that Fulgoni describes, either expressly or inherently, each element of claims 1-4, 7, 9-13, 16, 18-20, 23, 24, 26 and 27, and therefore the rejections of these claims under 35 U.S.C. § 102(e) should be withdrawn. Furthermore, the Examiner has not established a *prima facie* case of obviousness of claims 5, 6, 8, 14, 15, 17, 21, 22, 25 and 28-40, and thus the rejections of these claims under 35 U.S.C. § 103(a) should be withdrawn as well. Therefore, the record as a whole demonstrates the rejection cannot stand and should be reversed.

35 U.S.C. § 102(e) rejections

Fulgoni does not describe, either expressly or inherently, each element of claims 1-4, 7, 9-13, 16, 18-20, 23, 24, 26 and 27. Fulgoni is directed towards monitoring browser-based Internet data, whereas claimed aspects of the present invention are directed towards monitoring non-browser-based Internet data. Furthermore, Fulgoni's disclosure of an applet does not anticipate the monitoring program recited by the claims. Thus, the 35 U.S.C. § 102(e) rejections should be withdrawn.

Fulgoni is explicitly and specifically directed towards monitoring browser-based Internet data, whereas claimed aspects of the present invention are directed towards monitoring non-browser-based Internet data

Claim 1

It is respectfully submitted that Fulgoni does not disclose, either expressly or inherently, an invention which monitors non-browser Internet activity as recited by claim 1. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or

inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131.

The primary goal of the present invention is to monitor non-browser, i.e., non-World-Wide-Web (WWW) site, Internet activity. As explained at page 3, par. [0008] of the specification, “while the voluntary programs currently available in the art are configured to monitor web sites accessed by the computer user, they do not offer the capability to monitor the activities resulting from use of other protocols, such as access to file share programs, news groups, chat rooms, peer to peer chats, file transfer protocols, and e-mails. Without these capabilities a user may circumvent a monitoring program by accessing unmonitored Internet protocols.” Thus, an aspect of the present invention is to monitor these non-browser Internet activities to prevent a user from circumventing one of the prior art monitoring programs, which only monitor browser Internet activities. Accordingly, claim 1 recites:

“A system for monitoring Internet use of a selected user, comprising:

a remote server;

a computer communicatively connected to said remote server having a monitoring program voluntarily installed thereon by the computer user, said monitoring program configured to monitor Internet access activity of the computer user and record said Internet access activity within said remote server; and

wherein said Internet access activity includes access to at least one Internet protocol from a group consisting of network news transfer protocols, file sharing programs, file transfer protocols, chat room access, peer to peer chats, and electronic mail activity.” (emphasis added)

In the Final Rejection dated February 6, 2008, the Examiner argued that Fulgoni discloses this recited non-browser monitoring feature of claim 1 because Fulgoni discloses that “secure internet transfer protocols can be used between an internet consumer and an internet content provider while still monitoring and collecting data about the user’s internet activities.” Fulgoni, col. 9, lines 31-35.

However, Fulgoni does not disclose the protocols recited by claim 1. The passage relied upon by the Examiner is the beginning sentence of a paragraph which discloses how Fulgoni can be used with secure, i.e., encrypted, Internet protocols when a customer is browsing websites. The sentence immediately following the sentence cited by the Examiner explains how “when an internet consumer initially requests a secure webpage, the consumer is sent an encryption key to enable encryption and decryption of webpages sent respectively to and from that website.” Fulgoni, col. 9, lines 35-39. Thus, the “secure internet transfer protocols” disclosed by Fulgoni are referring to secure web-based protocols (https), which are accessed through a browser, not the protocols recited by claim 1.

Fulgoni's invention specifically monitors only browser Internet activity. In contrast, the invention recited by claim 1 specifically monitors non-browser Internet activity. None of the Internet protocols monitored by the system recited by claim 1 utilize a browser. In fact, the instant application explains how browser-based monitoring is a deficiency in the prior art (see page 3, par. [0008]).

Fulgoni's invention requires the use of a browser for traffic to be redirected by an applet, as explained at col. 11, lines 48-56. Thus, Fulgoni's invention cannot be implemented **apart** from a browser, whereas the invention recited by claim 1 cannot be implemented **through** a browser. Thus, the invention disclosed by Fulgoni is mutually exclusive from the invention recited by claim 1. Even Fulgoni's discussion of the prior art focuses on browser-based technology, for example, at col. 2, lines 27-32 (explaining how "[s]uch systems commonly involve installing a large and cumbersome software application onto the consumer's computer, which operates at the same time as internet browser application software") and at col. 2, lines 56-col. 3, line 3 (explaining how "[b]ecause prior client-side systems require the use of an additional application to gather data, which application runs on the consumer's computer at the same time as the consumer's internet browser, the computer is slowed down by the added impact on its system's resources").

Throughout Fulgoni's disclosure, it is clear that his invention is intended to be based, and in fact is based, on the use of a browser. The specification of Fulgoni repeatedly describes an invention that monitors browser-based Internet data, as shown, for example, at FIG. 4:202 ("browser"), col. 4, lines 35-37, col. 5, lines 19-26 ("PC12 includes...application software...such software includes application software commonly referred to as a browser, such as Netscape or Internet Explorer"), col. 6, lines 35-37, col. 7, lines 26-28, col. 7, lines 44-48, col. 10, line 66-col. 11, line 1, col. 11, lines 9-15, col. 11, lines 52-56 ("the applet will reset the browser...") and col. 14, lines 62-67 (claim 1, reciting the step of "modifying a browser application"). Fulgoni neither mentions nor provides any possibility for the monitoring of non-browser protocols, and in fact, said monitoring of non-browser protocols (as in the applicant's claim 1) would be impossible to implement using the systems and methods of Fulgoni.

In sum, Fulgoni does not disclose any of the protocols recited by claim 1, including the "network news transfer protocols, file sharing programs, file transfer protocols, chat room access, peer to peer chats, and electronic mail activity," because Fulgoni is directed exclusively towards monitoring browser-based Internet data. In contrast, the invention recited by claim 1 is

directed towards monitoring non-browser-based Internet data. Accordingly, it is respectfully submitted that the rejection of claim 1 should be withdrawn for at least this reason.

Claims 2-4, 7, 9-13 and 16

Claims 2-4, 7, 9-13 and 16 depend on claim 1. Accordingly, it is respectfully submitted that the rejections of claims 2-4, 7, 9-13 and 16 should be withdrawn for at least the same reasons that the rejection of claim 1 should be withdrawn.

Claim 18

Claim 18 recites the feature of: "said Internet access activity including at least one Internet protocol from the group consisting of newsgroup access, file sharing programs, file transfer protocols, chat room activity, peer to peer chats, and electronic mail activity." As explained above with respect to claim 1, Fulgoni does not disclose these Internet protocols. Instead, Fulgoni is exclusively directed towards monitoring browser-based Internet data.

Thus, it is respectfully submitted that the rejection of claim 18 should be withdrawn for at least the same reasons that the rejection of claim 1 should be withdrawn.

Claims 19-20, 23, 24, 26 and 27

Claims 19-20, 23, 24, 26 and 27 depend from claim 18. Accordingly, it is respectfully submitted that the rejections of claims 19-20, 23, 24, 26 and 27 should be withdrawn for at least the same reasons that the rejection of claim 18 should be withdrawn.

Fulgoni's disclosure of an applet does not anticipate the recited feature of a "monitoring program"

Claim 1

Additionally, Fulgoni does not disclose the monitoring program recited by claim 1. Claim 1 recites "...a computer communicatively connected to said remote server having a monitoring program voluntarily installed thereon by the computer user, said monitoring program configured to monitor Internet access activity of the computer user and record said Internet access activity within said remote server..." (emphasis added).

In the Final Rejection dated February 6, 2008, the Examiner argues that: "Fulgoni discloses a small application software applet which can be directly downloaded or manually

installed or modified by a technician [i.e. broadly interpreted as voluntary monitoring program installed on the computer by a user as claimed] [col. 11, lines 48-59].

Fulgoni discloses the installation of an “applet,” not a “monitoring program configured to monitor Internet access activity of the computer user and record said Internet access activity within said remote server” as recited by claim 1. Throughout Fulgoni’s disclosure, there is a consistent distinction between “applet” and “software program.” To assist in clarifications of terms as they are known and used in the art, at www.wikipedia.org, an “applet” is defined as: “a software component that runs in the context of another program, for example a web browser. An applet usually performs a very narrow function that has no independent use.” In contrast, the monitoring program recited by claim 1 does **not** run in the context of another program, and **has** independent uses. In fact, the monitoring program recited by claim 1 is a stand-alone independent software application that does not rely on a browser (or other type of program). Thus, the applet disclosed by Fulgoni does not anticipate the monitoring program recited by claim 1.

Fulgoni requires the installation of an “applet” to make his invention work. The reason Fulgoni discloses an applet instead of a software program is because Fulgoni’s invention is focused on “server-side data collection,” not client-side data collection. Fulgoni discloses the use of an applet in his FIG. 4, step 202, and at col. 4, lines 34-39 (“simply instructing the user’s internet browser to route all internet traffic” is defined later as the function of the applet), col. 6, lines 59-61 (“a configuration option to the browser”), col. 11, lines 48-52 (“the consumer is provided with a small application software applet which adjusts the browser application running on the consumer’s computer so that it proxies to the service provider’s proxy server”), col. 11, lines 54-55 (“the applet will reset the browser to proxy...Publicly available browsers are provided with the ability to do this ‘reset’ operation”), col. 11, line 56, and col. 14, line 62 (claim 1, which recites the step of “modifying a browser application”). In all of these passages, Fulgoni’s invention describes an applet as distinct from a software application, consistent with the dictionary definition.

Furthermore, Fulgoni’s disclosure supports the technical distinction between an applet and a software program by consistently criticizing software programs. Throughout the specification, Fulgoni characterizes systems that rely on client-side programs as a deficiency his invention attempts to cure. Fulgoni criticizes client-side programs, for example, at col. 2, lines 56-64 (“Prior client-side systems likewise suffer from different, but nevertheless severe, deficiencies. Because prior client-side systems require the use of an additional application to

gather data...”), col. 3, lines 1-25 (“...Thus, when a website changes the layout or content of a webpage that the client-side software is supposed to monitor, the client-side software on each participating internet consumer’s computer must be updated. As will be immediately appreciated, this can be a large, cumbersome, and expensive undertaking”), and col. 4, line 55-58 (“Different from client-side systems, systems and methods in accordance with the present invention do not demand significant computing resources, nor require an expensive customer service center.”). Thus, Fulgoni discloses the use of an applet to overcome these deficiencies with client-side software programs, such as the monitoring program recited by claim 1.

This is further emphasized throughout Fulgoni by the fact his invention is a server-side application. Fulgoni repeatedly characterizes his invention as a server-side application, for example, at col. 6, line 57-col. 7, line 5, col. 9, line 43-col. 10, line 13 (and his FIG. 5, which can only be implemented with server-side software), col. 10, lines 40-45 (“because the methods of the present invention do not rely on client-side data collection, but instead utilize server-side data collection...”), col. 12, lines 1-18 (describing a server-side application in the context of the embodiment), col. 13, lines 8-9 (“data collected by the service provider”), col. 13, line 31 (“the service provider’s database”), col. 14, lines 63-65 (Claim 1, reciting the feature “to enable communications sent to and from the registered consumer’s computer to be directed through the provider of services”), col. 15, lines 1-4 (claim 1 actually involves two servers, “directing at least some communications addressed to the destination server on the network from the registered consumer’s computer to a server of the provider of services”), and col. 16, lines 9-36 (claim 10, which is entirely a server-side application to handle secure traffic).

Fulgoni does mention one other type of software which further discloses the difference between his “applet” and “application software.” At col. 5, lines 24-26, Fulgoni defines “browser” as “application software.” At col. 11, lines 52-56, Fulgoni discloses his invention relies on existing browsers having the functionality to allow an applet that redirects traffic to a proxy (“If the service provider is utilizing system 100...the applet will reset the browser to proxy to domain 102. Publicly available browsers are provided with the ability to do this ‘reset’ operation”). At col. 7, lines 23-28, Fulgoni discloses using existing (pre-installed as part of the operating system of the computer) “application software on PC 12...to open a connection to the WWW. The user then launches and uses the browser software to request data from a specified machine, such as server 22...” Also at col. 7, line 44, “browser software” on the consumer’s computer presents data from the service provider’s server to the consumer. The consumer’s reliance on the ability of browsers to have an applet added to provide a benefit to the consumer is disclosed at

Fulgoni, col. 10, line 66-col. 11, line 1 ("Commercially available browser software, such as Navigator and Internet Explorer, include decompression software..."). In all of these references and elsewhere throughout the specification, it is clear that Fulgoni's use of the term "applet" falls into the technical definition of the term "applet." In contrast, claim 1 recites an invention which utilizes a stand-alone independent software application that does not rely on a browser.

Fulgoni teaches away from and is exclusive of the applicant's invention. Thus, it is respectfully submitted that the rejection of claim 1 should be withdrawn for at least this reason as well.

Claims 2-4, 7, 9-13 and 16

Claims 2-4, 7, 9-13 and 16 depend on claim 1. Accordingly, it is respectfully submitted that the rejections of claims 2-4, 7, 9-13 and 16 should be withdrawn for at least the same reasons that the rejection of claim 1 should be withdrawn.

Claim 18

Claim 18 recites the feature of: "a user voluntarily installing a monitoring program on the selected computer, said program configured to monitor Internet access activity of said user..."As explained above with respect to claim 1, Fulgoni does not disclose a monitoring program installed on a user's computer. Instead, Fulgoni discloses a browser-based applet.

Thus, it is respectfully submitted that the rejection of claim 18 should be withdrawn for at least the same reasons that the rejection of claim 1 should be withdrawn.

Claims 19-20, 23, 24, 26 and 27

Claims 19-20, 23, 24, 26 and 27 depend from claim 18. Accordingly, it is respectfully submitted that the rejections of claims 19-20, 23, 24, 26 and 27 should be withdrawn for at least the same reasons that the rejection of claim 18 should be withdrawn.

35 U.S.C. § 103(a) rejections

It is respectfully submitted that the Examiner has not established a *prima facie* case of obviousness regarding the rejections of claims 5, 6, 8, 14, 15, 17, 21, 22, 25 and 28-40. As a preliminary matter, independent claims 29 and 34 are each directed towards monitoring non-browser-based Internet data and recite a "monitoring program." "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP 2143.03.

Accordingly, the rejections of independent claims 29 and 34, along with dependent claims 30-33 and 35-40, should be withdrawn for at least the same reasons that the rejection of independent claim 1 under 35 U.S.C. § 102(e) should be withdrawn, as explained above.

Furthermore, Fulgoni actually teaches away from the use of client-side applications, whereas claimed aspects of the present invention are directed towards client-side applications. Additionally, Fulgoni requires using proxy servers, whereas the present invention does not require using proxy servers. Accordingly, the 35 U.S.C. § 103(a) rejections should be withdrawn.

Fulgoni teaches away from the claimed invention because Fulgoni criticizes client-side applications and the claimed invention is directed towards client-side applications

One skilled in the art would not have been motivated to combine Fulgoni with Linden to arrive at the claimed invention because Fulgoni teaches away from client-side applications. A prior art reference that "teaches away" from the claimed invention is a significant factor to be considered in determining obviousness. MPEP 2145 (X)(D)(1).

As mentioned above, Fulgoni frequently and consistently criticizes client-side applications throughout the specification. For example, at col. 2, lines 27-35, Fulgoni lists client-side data collection (such as the data collection performed by the system recited by claim 1) as a deficiency in the prior art because "such systems commonly involve installing a large and cumbersome software application onto the consumer's computer." Similarly, at col. 2, lines 56-64, Fulgoni explains that:

"[p]rior client-side systems likewise suffer from different, but nevertheless severe, deficiencies. Because prior client-side systems require the use of an additional application to gather data, which application runs on the consumer's computer at the same time as the consumer's internet browser, the computer is slowed down by the added impact on its system's resources. Thus, the consumer notices a delay in the operation of her computer, which is not acceptable to many consumers (emphasis added)."

At col. 3, lines 5-6, Fulgoni finds deficiency in "specialized software" that must be updated and requires a large customer service center. Collectively, these statements by Fulgoni constitute a clear teaching away from client-side applications. In contrast, aspects of the present invention are directed towards a client-side application. For example, independent claims 29 and 34 each recite a monitoring program which comprises a client-side application.

Therefore, Fulgoni's teaching away from client-side applications weighs against a finding of obviousness, and the 35 U.S.C. § 103(a) rejections should be withdrawn for at least this reason.

Fulgoni requires the use of a proxy server or servers, whereas aspects of the present invention do not require a proxy server or server.

Proxy servers play a key role in Fulgoni's invention, a role without which Fulgoni would have no invention. In other words, Fulgoni teaches away from Internet data collection systems which do not require proxy servers. In contrast, the claimed invention in this case does not require a proxy server.

Fulgoni's emphasis on the importance of proxy servers is repeated throughout the specification and figures. For example, Fulgoni's Abstract states: "All of an Internet user's Internet data is routed to a known domain on the Internet, from which it is routed on to the intended recipient. The domain includes proxy servers which proxy the user's WWW data requests to the domain..." Fulgoni's diagram illustrates proxies in a key role of his invention. The proxy server 18 in FIG. 1 and FIG. 2 correspond to step 202 of the method shown in FIG. 4. ("Adjust Browser to proxy to service provider's domain"). Fulgoni's "Summary of the Invention" likewise begins (at col. 3, line 37) with the step of directing traffic to a proxy ("comprises the steps of directing all data sets from the computing device to a known domain..."). Fulgoni's "Detailed Description" section also begins (at col. 4, line 30) with a discussion of the necessity of proxy servers in his invention ("A domain is established with proxy servers and data servers to which all of a single internet user's activity is routed"). Furthermore, the specification's lengthy discussion of proxies at col. 6, line 38 through col. 7, line 5 discloses the necessity of using a proxy to implement Fulgoni's invention.

Other examples of Fulgoni's dependence on a proxy can be found, for example, at col. 8, lines 10-11 ("all of the data that is sent to and from PC 12 is routed through domain 102"), col. 8, lines 23-26 ("an exemplary embodiment...includes at least one, and preferably numerous...data servers 110, 112, 114, which are in communication with the proxy server"), and col. 10, lines 62-65 ("an incentive for the internet consumer to agree to proxy"). The necessity of a proxy to implement Fulgoni's invention is emphasized at col. 11, lines 48-64 ("the consumer is provided with a small application software applet which adjusts the browser application running on the consumer's computer so that it proxies to the service provider's proxy server, i.e., so that it redirects all of the consumer's outbound data...Thereafter, as described

above, all of the consumer's internet data will be routed to the service provider."), and at claim 1, col. 14, lines 62-66.

In short, Fulgoni emphasizes the necessity of proxy servers in his written description and his figures, and even directs separate claims towards this aspect by directing the claims towards handing secure (https) data (9/31-10/13, Fig. 5, and claim 10). In contrast, the claimed invention does not require a proxy, nor does it work through a browser (as does https data). Instead, the claimed invention is directed towards client-side software, which does not require the use of a proxy. The invention disclosed by Fulgoni requires a proxy to monitor internet traffic, whereas aspects of the present invention do not require a proxy to monitor internet traffic. Fulgoni's teaching away weighs in favor of the nonobviousness of the claimed invention, and particularly in the nonobviousness of combining Fulgoni with Linden et al.

Accordingly, the rejections of claims 5, 6, 8, 14, 15, 17, 21, 22, 25 and 28-40 under 35 U.S.C. § 103(a) should be withdrawn for these reasons.

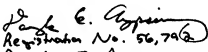
CONCLUSION

In view of the foregoing, it is respectfully submitted that the rejections of record should be reversed.

The fees in the amount of \$1,445 to cover the appeal brief fee (\$270) and a five-month Petition for Extension of Time (\$1,175) is being paid electronically via Deposit Account No. 04-1061. The Director is hereby authorized to credit any overpayment or charge any additional fees to Deposit Account No. 04-1061.

Respectfully submitted,

Date: November 7, 2008


Registration No. 56,792
Douglas E. Apperson
John M. Naber
Registration No. 46,487

DICKINSON WRIGHT PLLC
1875 Eye Street, NW, Suite 1200
Washington, DC 20006
Telephone: (202) 659-6950
Facsimile: (202) 659-1559

CLAIMS APPENDIX

1. (Original) A system for monitoring Internet use of a selected user, comprising: a remote server; a computer communicatively connected to said remote server having a monitoring program voluntarily installed thereon by the computer user, said monitoring program configured to monitor Internet access activity of the computer user and record said Internet access activity within said remote server; and wherein said Internet access activity includes access to at least one Internet protocol from a group consisting of network news transfer protocols, file sharing programs, file transfer protocols, chat room access, peer to peer chats, and electronic mail activity.

2. (Original) The system of claim 1, wherein said remote server includes a processing program, said processing program configured to analyze said recorded Internet access activity and generate a report of said Internet access activity.

3. (Original) The system of claim 2, wherein said report includes a list of said recorded Internet access activity and a score assigned to each said recorded Internet access activity.

4. (Original) The system of claim 2, wherein said report is accessible by a third party recipient.

5. (Original) The system of claim 3, wherein said report displays said list of said recorded Internet access activity sorted by said score.

6. (Original) The system of claim 3, wherein said report displays said list of said recorded Internet access activity sorted chronologically.

7. (Original) The system of claim 3, wherein said report includes at least one portion and said at least one portion includes at least one link to at least one other portion.

8. (Original) The system of claim 7, wherein each of said at least one portions contains a list of recorded Internet access activity of one of said Internet protocols, and wherein said portions further include a computer link to connect to another portion of said report.

9. (Original) The system of claim 1, further including a first database located within said remote server, and wherein said monitored Internet access activity is stored on said first database.

10. (Original) The system of claim 9, wherein said remote server further includes a processing program and a second database, said processing program configured to analyze said recorded Internet access, and transfer said recorded Internet access activity to said second database.

11. (Original) The system of claim 10, wherein said second database is configured to generate a report of said recorded Internet access activity.

12. (Original) The system of claim 11, wherein said report includes a list of said

recorded Internet access activity and a score assigned to each said recorded Internet access activity.

13. (Original) The system of claim 11, wherein said report is accessible by a third party recipient.

14. (Original) The system of claim 12, wherein said report displays said list of said recorded Internet access activity sorted by said score.

15. (Original) The system of claim 11, wherein said report displays said list of said recorded Internet access activity sorted chronologically.

16. (Original) The system of claim 11 wherein said report includes at least one portion and said at least one portion includes at least one link to at least one other portion.

17. (Original) The system of claim 16, wherein each of said plurality of portions contains a list of recorded Internet access activity of one of said Internet protocols, and wherein said portions further include a computer link to connect to another portion of said report.

18. (Original) A method of monitoring Internet use of a selected computer user, the method comprising the steps of: a user voluntarily installing a monitoring program on the selected computer, said program configured to monitor Internet access activity of said user, said Internet access activity including at least one Internet protocol from the group consisting of newsgroup access, file sharing programs, file transfer protocols, chat room activity, peer to peer

chats, and electronic mail activity; monitoring said Internet access activity; and recording said Internet access activity on a first database located within a remote server.

19. (Original) The method of claim 18, further including the steps of: processing said recorded Internet access activity; and transferring said recorded Internet access activity to a second database.

20. (Original) The method of claim 19, further including the steps of: generating a report of said Internet access activity within said second database; and providing said report to a third party recipient selected by said user.

21. (Original) The method of claim 20, wherein providing said report includes notifying said third party recipient to access said second database to view said report.

22. (Original) The method of claim 20, wherein providing said report includes electronically sending said report to said third party recipient at pre-selected time intervals.

23. (Original) The method of claim 19, further including the step of: assigning a score to said Internet access activity based on predetermined scoring criteria.

24. (Original) The method of claim 23, further including the step of: preparing a report of said Internet access activity, said report including said score.

25. (Original) The method of claim 24, wherein preparing said report further includes sorting said Internet access activity by said score.

26. (Original) The method of claim 24, wherein said score includes a numeric score.

27. (Original) The method of claim 24, wherein said score includes a relative score.

28. (Original) The method of claim 24, wherein preparing said report further includes sorting said Internet access activity chronologically.

29. (Original) A system for reporting the contents of Internet access from a selected computer, comprising: a remote server; a computer communicatively connected to said remote server having a monitoring program installed thereon, said monitoring program configured to monitor Internet access activity of the computer user, record said activity on said remote server, said Internet access activity includes access to at least one Internet protocol from the group consisting of hyper text transfer protocol, network news transfer protocol, file sharing programs, file transfer protocol, chat rooms, peer to peer chats, and electronic mail; and wherein said remote server is configured to generate a report, and said report includes a plurality of portions each of said plurality of portions contains a list of said recorded Internet access activity of one of said Internet protocols, and wherein said portions further include a computer link to connect to another portion of said report.

30. (Original) The system of claim 29, wherein said report is accessible by a third party recipient.

31. (Original) The system of claim 29, wherein said report further includes a score assigned to each Internet access activity listed.

32. (Original) The system of claim 31, wherein said report displays said list of said recorded Internet access activity sorted by said score.

33. (Original) The system of claim 32, wherein said report displays said list of said recorded Internet access activity sorted chronologically.

34. (Original) A method of reporting Internet use of a computer user, the method comprising the steps of: a user voluntarily installing an Internet monitoring program on the computer, said program configured to monitor Internet access activity of said user; monitoring said Internet access activity; generating a report of said Internet access activity, said report including a plurality of portions; and providing a link on one portion of said report to electronically connect to at least one other portion of said report, wherein each of said plurality of portions contain information on Internet access of different Internet protocols.

35. (Original) The method of claim 34, further including the step of: providing said report to a third party recipient selected by said user.

36. (Original) The method of claim 35, wherein providing said report includes notifying said third party recipient to access a database to view said report.

37. (Original) The method of claim 35, wherein providing said report includes electronically sending said report to said third party recipient at pre-selected time intervals.

38. (Original) The method of claim 34, further including the step of: assigning a score to said Internet access activity based on predetermined scoring criteria.

39. (Original) The method of claim 38, wherein generating said report further includes sorting said Internet access activity by said score.

40. (Original) The method of claim 34, wherein generating said report further includes sorting said Internet access activity chronologically.

EVIDENCE APPENDIX

none

RELATED PROCEEDINGS INDEX

none